In the

United States Court of Appeals

For the Seventh Circuit

No. 10192

KAKU NAGANO,

Plaintiff-Appellant,

vs.

J. HOWARD McGRATH, ATTORNEY GENERAL, ETC.,

Defendant-Appellee.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

AUG 7 1950

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1 Pleas had at a regular term of the United States District Court for the Eastern Division of the Northern District of Illinois begun and held in the United States Court Rooms in the City of Chicago in the Division and District aforesaid on the first Monday of March (it being the 6th day thereof) in the Year of Our Lord One Thousand Nine Hundred Fifty and of the Independence of the United States of America the 174th Year.

Present:

Honorable John P. Barnes, District Judge.
Honorable Philip L. Sullivan, District Judge.
Honorable Michael L. Igoe, District Judge.
Honorable William J. Campbell, District Judge.
Honorable Walter J. La Buy, District Judge.
Honorable Elwyn R. Shaw, District Judge.
Honorable William H. Holly, District Judge.
Roy H. Johnson, Clerk.
Thomas P. O'Donovan, Marshal.

Thursday, March 16, 1950.

Court met pursuant to adjournment.

Present: Honorable William J. Campbell, Trial Judge.

2 IN THE UNITED STATES DISTRICT COURT.

For the Northern District of Illinois,

Eastern Division.

Kaku Nagano, *Plaintiff,*

vs.

Tom C. Clark, Attorney General, as successor to the Alien Property Custodian, *Defendant.*

No. 47 C 1830.

Be It Remembered, that, on to-wit, the 19th day of December, 1947, the above-entitled action was commenced by the filing of the following Complaint, in the office of the Clerk of the United States District Court for the Northern District of Illinois, Eastern Division, in words and figures, following, to-wit:

3 IN THE UNITED STATES DISTRICT COURT.

* * (Caption—47-C-1830) * *

COMPLAINT IN EQUITY UNDER SECTION 9(a) OF TRADING WITH THE ENEMY ACT, AS AMENDED.

1. (a) Plaintiff, Kaku Nagano, is a native born citizen of Japan. Plaintiff is a permanent resident of the United States of America, having immigrated to the United States in the year 1915 as a permanent resident, having resided within the United States for a period in excess of seven consecutive years thereafter and never having relinquished her said United States domicile within the meaning of Section 3 of the Immigration Act of 1917 (U. S. Code, Title 8, Sec. 136(p)).

Plaintiff is married to one Shinsaku Nagano, a native born citizen of Japan, who immigrated to the United States of America as a permanent resident in the year 1906 and whose permanent residence, both legally and physi-

cally, has continued at all times to be in the United States of America, at Chicago, Illinois. Plaintiff is and has been physically but temporarily in Japan under the circumstances more particularly hereinafter set forth without at any time abandoning or relinquishing or intending to abandon or relinquish her permanent domicile and residence in the United States of America. Plaintiff is not an enemy or an ally of an enemy nor is she a "national of a designated enemy country" within the meaning
4 of any of the sections of the Trading with the Enemy Act as amended.

(b) This action arises under Section 9(a) of the Act of October 6, 1917, 40 Stat. L. 411, U. S. C. A. Title 50 App. Par. 9(a) as amended, known as the "Trading with the Enemy Act," as hereinafter more fully appears, and is brought against the defendant Tom C. Clark, Attorney General of the United States, as successor to the Alien Property Custodian, for the purpose of: (1) ascertaining and establishing the title and ownership of plaintiff in certain shares of stock of The Fuji Trading Company, vested by said Custodian as more particularly hereinafter alleged; (2) establishing that plaintiff is neither an enemy, ally of enemy, nor national of a designated enemy country within the true meaning and intent of the statute and of the executive regulations promulgated thereunder; and (3) enjoining the sale of any shares of The Fuji Trading Company, as more particularly hereinafter prayed.

2. The Fuji Trading Company is a corporation organized under the laws of the State of Illinois, having its principal office and place of business at Chicago, Illinois, and is engaged in the business of manufacturing and selling Chinese and oriental food products. The business was founded in 1910 by Shinsaku Nagano, husband of the plaintiff, and has been carried on since that date under his sole management and direction. The business is competitive and The Fuji Trading Company is a leading company within the United States in terms of volume and reputation of product. In 1911 the business was incorporated under the laws of Illinois and since that time Shinsaku Nagano, husband of the plaintiff, has been its president and majority shareholder.

5 3. Prior to January 3, 1932 the total issued capital stock of the company consisted of 10,000 shares of common capital stock having a par value of $10.00 a share.

The actual and record ownership of the stock was as follows:

Shinsaku Nagano	6210 shares
Kaku Nagano (plaintiff herein)	3780 shares
Y. S. Miya (brother of plaintiff)	10 shares
Total issued shares	10,000 shares

4. On January 3, 1932 at a duly authorized meeting of the shareholders of The Fuji Trading Company, a stock dividend of 5,000 shares was authorized to be declared payable to the holders of record on that date; and on the same date at a duly authorized meeting of the Board of Directors of the company a resolution was passed declaring the dividend aforesaid. The resolution of the shareholders authorizing the dividend was in words and figures as follows:

> "Upon motion duly made and seconded and by vote of all the stockholders present, the following resolution was adopted:
>
> "Resolved, That the Board of Directors of the Company be, and they are hereby authorized to declare a stock dividend aggregating $50,000.00, and to distribute same among the stockholders of the Company in proportion to their holdings."

The resolution of the directors declaring the dividend was in words and figures as follows:

> "Resolved, that a stock dividend aggregating $50,000.00 is hereby declared payable to the stockholders of record, January 3, 1932, said stock dividend to be distributed to the stockholders in proportion to their present stockholdings."

The holders of record on January 3, 1932 and the amounts of their holdings were as heretofore set forth in paragraph 3. By virtue of said dividend, the record ownership of the stock of The Fuji Trading Company became as follows:

6

Name	Original Holding	Proportionate Shares of Dividend	New Holding
Shinsaku Nagano	6210	3105	9315
Kaku Nagano	3780	1890	5670
Y. S. Miya	10	5	15
	10000	5000	15000

No stock dividends were declared nor were any transfers made of the capital stock of the company from the date of the dividend of January 3, 1932, except as hereinafter alleged.

5. Stock certificates for the proportionate amounts of said dividend were never issued to the respective shareholders as authorized and directed by the above resolutions, but instead a single certificate, being certificate No. 59 dated April 1, 1932, for 5,000 shares was issued in the name Kaku Nagano and thereafter retained in the possession of Shinsaku Nagano, husband of the plaintiff. Said certificate was never actually or constructively delivered to plaintiff, Kaku Nagano.

6. Plaintiff has never, at any time, had any knowledge of the above mentioned stock dividend declared in the year 1932 nor of the issuance in her name in 1932 of the above mentioned certificate for 5,000 shares, except insofar as she became informed by virtue of interrogatories propounded to her in certain depositions taken at the office of the Consul of the United States of America at Yokohama, Japan, under a commission issued in the proceedings pending in the United States District Court for the Northern District of Illinois, Eastern Division, entitled Shinsaku Nagano, Plaintiff *vs.* James E. Markham, as Alien Property Custodian, defendant, General Number 45 C 700.

7. Plaintiff further states the fact to be that the above allegations of fact set forth in the foregoing Paragraphs 3, 4, and 5 of this complaint are made on behalf of plaintiff by her counsel as her duly authorized agent and do not represent matters within the personal knowledge of plaintiff but are based upon the knowledge of her attorney as to the corporate records of The Fuji Trading Company and of his knowledge of the matters alleged and proved in open court in the above mentioned case of Shinsaku Nagano *vs.* James E. Markham, as Alien Property Custodian, wherein plaintiff's counsel herein appeared of record for the plaintiff in that case.

8. The facts of plaintiff's residence in and temporary absence from the United States are as follows:

(a) In January, 1914, plaintiff, then residing in Tokyo, Japan, married Shinsaku Nagano, then a permanent resident of the United States. Following the birth of a daughter, Masako, in Japan in November, 1914, plaintiff immigrated to the United States in the month of January, 1915

as a permanent resident, leaving her child in the care of its grandmother, plaintiff's mother. In the year 1916, a son, Shigeo, was born to plaintiff and her husband at Chicago, Illinois. In the year 1919, plaintiff, with their son, Shigeo, went with her husband to Japan on a voyage made for the purpose of her husband's recuperation from a severe attack of influenza which he sustained during the epidemic of that year. During this visit to Japan their daughter, Takako, was born, but plaintiff nevertheless returned to the United States with her husband and American born son, Shigeo, leaving their two Japanese born daughters in the care of their grandmother. Plaintiff remained with her husband in Chicago until the year 1924.

8 (b) In 1924, an illness of plaintiff's daughter, Takako, led to a voyage to Japan by the plaintiff and her husband and on this occasion the decision was made for the plaintiff to remain in Japan for the years necessary to provide a Japanese education for the two Japanese born daughters and also for the American born son, such education being necessary in order for the son Shigeo to take his place in his father's importing business and for the daughters because of the lack of marriage prospects except among their own race.

(c) Plaintiff's daughters finished their education and reached marriageable age, Masako in 1932 and Takako in 1937. The expectation of plaintiff and her husband was that their daughters' marriages would take place soon after their education. In Japan such marriages are arranged for by the parent and a friend acting as intermediary, who is called a matchmaker. The presence of the parent with the unmarried daughter is indispensable. Contrary to the hopes of plaintiff and her husband the anticipated marriage could not be arranged, primarily because so many of the young men were away in the army. In spite of plaintiff's most anxious efforts since 1932, Takako's marriage was not arranged until 1941. Masako is still unmarried and is past the age ordinarily accepted for marriage.

(d) During the years in which plaintiff was obliged to remain in Japan (the United States Immigration Act of 1924 took away the right to bring the daughters to the United States) her husband remained physically present in and a permanent resident of the United States, at Chicago, Illinois. Plaintiff considered her home to be with her

husband at Chicago, Illinois, and as clearly evidenced throughout the large file of correspondence between plaintiff and her husband (as subpoenaed by the Justice
9 Department during the above mentioned suit of Shinsaku Nagano *vs.* James E. Markham, as Alien Property Custodian), plaintiff has consistently retained her intention to return to her husband and her Ameri in residence at the earliest date possible. In the meantime plaintiff's husband has visited plaintiff in Japan for a period of several months in each and every year since her departure from the United States in the year of 1924, save only for the years 1932 and 1933, in which she was in the United States, and save also for the war years commencing 1942. Plaintiff's husband was last with her for seven months in the year 1941.

(e) Plaintiff has at all times remained loyal to the United States and has not engaged in trade with Japan or participated in the Japanese war effort. During the war plaintiff was inactive and lived with her unmarried daughter Masako in their cottage in Shizuoka.

(f) For the foregoing reasons plaintiff's absence from the United States must, as a matter of law, be considered a temporary and involuntary absence occasioned by family obligations which plaintiff had no alternative but to perform. Such absence was not for the purpose of trading in Japan nor for the purpose of residing in Japan.

(g) On the foregoing facts, plaintiff states that she is neither an "enemy" within the meaning of the Trading with the Enemy Act, nor a national of a designated enemy country.

9. On or about February 2, 1943, the defendant's predecessor, Leo T. Crowley, as United States Alien Property Custodian, entered a purported vesting order under the authority of the Trading with the Enemy Act as amended under the terms of which purported order he found,
10 among other things, the following: that the plaintiff, Kaku Nagano, was a national of a designated enemy country, to-wit, Japan; that 8780 shares of $10 par value common capital stock of The Fuji Trading Company were registered in the name of and owned by said Kaku Nagano, and that 58.5% of all of the stock of the company were thus controlled by such national of a designated enemy country and thereupon her, by said order, purported to vest in himself as Alien Property Custodian said 8780 shares of stock of the company and to undertake the direc-

tion, management, supervision and control of the corporation. A copy of the purported vesting order is attached hereto, marked "Plaintiff's Exhibit 1", and made a part hereof.

10. Said Shinsaku Nagano complied with the provisions of the purported vesting order and on March 31, 1943, and under protest, delivered to the Federal Reserve Bank of New York for the account of the Alien Property Custodian three certificates for a total of 8780 shares of the capital stock of The Fuji Trading Company representing the certificates formerly outstanding in the name of Kaku Nagano: Certificate No. 60 being for 5670 shares representing the total number of shares actually owned by Kaku Nagano, and certificate No. 61 being for 3105 shares representing the shares in question which should properly stand in the name of the husband of plaintiff, Shinsaku Nagano, and Certificate No. 62 for 5 shares which should properly stand in the name of Y. S. Miya as his proportionate shares of the stock dividend in question.

11. On or about December 4, 1947, being within the time permitted by law, plaintiff filed with the defendant, Tom C. Clark, Attorney General of the United States as successor to the Alien Property Custodian, upon the form provided by the Custodian and in accordance with the authority of the Trading with the Enemy Act as amended, her Notice of Claim arising as a result of said purported vesting order. A copy of said Notice of Claim is attached hereto, marked "Plaintiff's Exhibit 2" and by reference made a part hereof.

12. The complaint of Shinsaku Nagano heretofore filed in this court, as hereinabove set forth, presented to the court for decision two primary issues which are pending and undisposed of, that is to say, (1) the issue of the ownership of 3105 shares of The Fuji Trading Company of said shares constituting a portion of the 5,000 share stock dividend declared on January 3, 1932; and (2) the issue of whether the plaintiff herein, Kaku Nagano, is a "national of a designated enemy country" within the meaning of the Trading with the Enemy Act and the Executive Regulations promulgated under the purported authority thereof. In accordance with the statement contained in the Notice of Claim hereto attached as "Plaintiff's Exhibit 2", plaintiff does not by this her complaint claim that said 3105 shares were given to her but on the contrary joins in the allegation of said Shinsaku Nagano that said

shares were never at any time out of his possession and complete control; and that plaintiff never knew of the issuance of said shares, as hereinabove alleged in Paragraph 6 of this complaint; but if the court shall determine as a finding of fact or as a conclusion of law that said shares become the property of this plaintiff, then said shares should be returned to her on the ground aforesaid that she is not a "national of a designated enemy country," and upon the further ground that the definitions provided
12 in the statute and in the Executive Regulations promulgated thereunder were never intended to apply to loyal resident aliens such as plaintiff regardless of any temporary physical absence from the United States.

Plaintiff further alleges that she will be caused irreparable damage by the wrongful seizure, confiscation and proposed sale of any shares of stock owned by her in The Fuji Trading Company, particularly in the event that such seizure and sale may have the effect of taking the control of said corporation out of the family union, and plaintiff respectfully represents that she is entitled to an order from this Honorable Court restraining such seizure, confiscation and proposed sale.

13. Plaintiff has not made application to the President for the delivery of said shares to her or for other relief as authorized under the provisions of section 9(a) of the Trading with the Enemy Act as amended, and is accordingly authorized under said section to proceed with this suit having filed her notice of claim with the United States Alien Property Custodian as more particularly hereinabove alleged.

Wherefore, plaintiff prays:

1. That the defendant, Tom C. Clark, Attorney General of the United States, as successor to the Alien Property Custodian, may be enjoined from selling or disposing of any stock, property, or other rights claimed by him to have been acquired under said purported vesting order pending the final determination of this proceeding.

2. That the Court may determine that the plaintiff is neither an enemy ally of enemy, nor a "national of a designated enemy country" within the meaning of the Trading with the Enemy Act and the Executive Regulations promulgated under the purported authority thereof, but that on the contrary she is a permanent resident of the
13 United States entitled to readmission under the Sev-

enth Proviso of Section 3 of the Immigration Act of 1917 (U. S. Code, Title 8, Sec. 136(p)) to the effect that any alien having resided in the United States for more than seven consecutive years may return from an absence regardless of its duration if it be established that the alien has not relinquished such domicile.

3. That the Court may order and decree the return to plaintiff as a loyal resident alien of all shares of The Fuji Trading Company which the Court may determine to be the property of plaintiff.

4. That the Court may grant such other and further relief as to the Court may seem meet.

C. Lysle Smith,
Attorney for Plaintiff.

C. Lysle Smith,
Attorney for Plaintiff,
38 So. Dearborn Street,
Chicago, Illinois.
Ran. 0260

14 "Plaintiff's Exhibit 1."

UNITED STATES OF AMERICA.

OFFICE OF ALIEN PROPERTY CUSTODIAN.

Vesting Order Number 813.

Re: Fuji Trading Company, Inc.

Under the authority of the Trading with the Enemy Act, as amended, and Executive Order No. 9095, as amended, and pursuant to law, the undersigned, after investigation:

1. Finding that Kaku Nagano, whose last known address is Tokyo, Japan, is a national of a designated enemy country (Japan);

2. Finding that 8,780 shares of $10 par value common capital stock of Fuji Trading Company, Inc., an Illinois corporation, Chicago, Illinois, are registered in the name of and owned by said Kaku Nagano;

3. Finding that said corporation is a business enterprise within the United States and that said 8,780 shares constitute a substantial part (namely, 58.5%) of all outstanding capital stock of said business enterprise and are evidence of control thereof;

4. Determining, therefore, that said business enterprise

is controlled by said Kaku Nagano and is a national of a designated enemy country (Japan);

5. Determining that to the extent that such nationals are persons not within a designated enemy country, the national interest of the United States requires that such persons be treated as nationals of the aforesaid designated enemy country (Japan);

6. Having made all determinations and taken all action, after appropriate consultation and certification, required by said Executive Order or Act or otherwise; and

7. Deeming it necessary in the national interest;

hereby (i) vests in the Alien Property Custodian the shares of stock described in subparagraphs 2 hereof to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States, and (ii) undertakes the direction, management, supervision and control of such business enterprise to the extent deemed necessary or advisable from time to time by the undersigned.

Such property, and any or all of the proceeds thereof, shall be held in an appropriate special account or accounts, pending further determination of the Alien Property Custodian. This shall not be deemed to limit the powers of the Alien Property Custodian to return such property or the proceeds thereof or to indicate that compensation will not be paid in lieu thereof, or to vary the extent of such direction, management, supervision or control or to terminate the same, if and when it should be determined that any of such action should be taken.

Any person, except a national of a designated enemy country, asserting any claim arising as a result of this order may file with the Alien Property Custodian a notice of his claim, together with a request for a hearing thereon, on Form APC-1, within one year from the date hereof, or within such further time as may be allowed by the Alien Property Custodian. Nothing herein contained shall be deemed to constitute an admission of the existence, validity or right to allowance of any such claim.

The terms "national", "designated enemy country" and "business enterprise within the United States" as used herein shall have the meanings prescribed in Section 10 of said Executive Order.

Executed at Washington, D. C. on February 2, 1943.

(Signed) Leo T. Crowley,

(Official Seal) *Alien Property Custodian.*

16 "Plaintiff's Exhibit 2."

Claimant's Copy.

Do Not Write In This Space

Claim No.
V. O. No.
Account No.

UNITED STATES OF AMERICA.

OFFICE OF ALIEN PROPERTY CUSTODIAN.

Notice Of Claim For Return Of Property.

Note.—All answers to questions on this form (except names and addresses) must be in English. Amounts of money must be stated in dollars. Copies of documents must be accompanied by English translations. This notice is repeated below in French and in German.

Avis: Toutes les réponses aux questions ci-dessous doivent être faites en anglais, sauf en ce qui concerne les noms et adresses. Le montant des sommes doit être indiqué en dollars (États-Unis). Une traduction en anglais doit être jointe à chaque document.

Zur Kenntnisnahme: Alle Antworten auf die Fragen auf diesem Formular (mit Ausnahme von Namen und Adressen) müssen in englischer Sprache gegeben werden. Geldeträe müssen in Dollars (Amerikanische Währung) angeführt werden. Falls Abschriften von Schriftstücken unterbreitet werden, müssen Übersetzungen in englischer Sprache beigefügt werden.

Please read the accompanying explanation and instructions before filling out the form.

1. (a) Claimant's name Kaku Nagano
   (b) Address 1032 North Dearborn Street, Chicago, Illinois (See Supplement).
   (c) Has claimant filed any other form claiming the same property? Yes No X
   If yes, give date on which claim was filed, and claim number (if known)

2. (a) Claimant's agent (if any) C. Lysle Smith
   (b) Agent's address 38 South Dearborn Street, Chicago, Illinois.
   (c) Is agent authorized to receive payment of money or delivery of property, if returned? Yes X No If yes, an original power of attorney must be attached. Filed herewith.

3. Fees for prosecuting this claim Reasonable attorney's fees based on extent of services required and not in excess of amount permitted by law.

4. Value of property claimed Estimated value, $75,000.00.

5. Payments for material or services supplied, or patents licensed, to or for the United States Government
   Not applicable.

6. Vesting order by which the Alien Property Custodian acquired the property (if known) No. 813

7. Identification of property claimed See Supplement.

8. Are claimant's rights in the property subject to any condition or encumbrance? Yes X No
   See Supplement.

9. Characterization of claimant.—Answer this item by filling out schedule 9A or 9B. If the claim is filed by an individual, fill out schedule 9A, describing him. If the claim is filed by a group of individuals (such as co-owners or partners), fill out a separate schedule 9A for each member of the group. If the claimant is a corporation or association, fill out schedule 9B.

10. Owner of property on vesting date.—
    (a) Give the vesting date February 2, 1943.
    (This means the date when the Alien Property Custodian took over the property which you are now claiming. If you do not know that date, use the approximate date on which your property was taken, followed by the word "approximately." If you do not know even the approximate date, write "December 7, 1941," and use this as the vesting date in answering questions in this item and in item 11.)

(b) Check the one of the following statements which applies to your claim:

X (1) The claimant was the owner of the property on the vesting date.

(2) The claimant is the legal representative or successor of an individual who owned the property on the vesting date.

(3) The claimant is the legal representative or successor of a corporation which owned the property on the vesting date.

(If you checked number (1) above, do not use schedules 10A or 10B, but go directly to item 11. If you checked number (2) above, fill out schedule 10A. If you checked number (3) above, fill out schedule 10B.)

11. Chain of title to property.—Describe below the last transfer of title to the property. (Omit any transfer already described in Schedule 10A or 10B.)

(a) Date Miscellaneous dates from 1923 to 1932.
(b) By whom transferred Shares issued by Fuji Trading Co. to Kaku Nagano.
(c) To whom transferred See 11(b).
(d) Nature and terms of transfer See Supplement.
(e) Consideration actually paid See Supplement; to be paid
(f) If officially recorded or registered, give citation Not applicable.

If there have been any other transfers of the property since March 1, 1938, give the same information about these other transfers, using a supplement.

Attach a copy of each document of title, and of any contract pursuant to which a transfer was made, to each copy of your form. Photographic copies are preferred. If documents are in a foreign language, English translations must also be attached.

12. Other relevant information.—If there are any other facts of which you want to advise the Custodian, write them on a separate sheet of paper under the heading "Supplement to item 12." You may also attach copies of any documents not previously referred to, and mark them in the same way. See Supplement.

13. Affidavit.—The undersigned makes the following declaration under the penalties of perjury and false swearing:

(a) Check the one of the following statements which applies, and strike out the others:

(1) I am the claimant named in item 1.

X (2) I am the claimant's agent, authorized by the attached power of attorney.

(3) I am an officer of the claimant corporation, holding the position of

(b) The facts set forth in the foregoing form and in all attached supplements and schedules are true, and all attached documents are true copies of the originals, to the best of my knowledge and belief.

(c) I have no knowledge of any fact called for by the foregoing form, schedules, and instructions which is not fully set forth.

(d) To the best of my knowledge and belief, the property claimed was not at any time after September 1, 1939, held or used pursuant to any arrangement to conceal any interest of an enemy of the United States.

Kaku Nagano,
Claimant,
By /s/ C. Lysle Smith,
Her Attorney in Fact.
C. Lysle Smith.

14. Notarization.—The foregoing declaration was subscribed and sworn to (or affirmed) before me this 3d day of December, 1947.

Ruth Gifford,
(Seal) *Notary Public.*

17 Original.

Schedule 9A.

(Supplementing Form APC—1A, Item 9.)

Characterization Of Individual Claimant.

(a) Name Kaku Nagano.
(b) Date of birth September 18, 1892.
(c) Place of birth Miko Shimizu, Japan.
(d) If claimant has been outside the United States (including its Territories and possessions) at any time since December 7, 1941, give the name of each country in which he was present, and the principal address at which he stayed in that country, as follows:
Country Japan from prior to 12/7/41 to present date. See Supplement.
Address Shizuoka.
(e) Has the claimant transacted any business since December 7, 1941, personally or by agent, in Germany, Japan, Italy, Hungary, Rumania, or Bulgaria? Yes No X.
(If yes, explain fully in a supplement.)
If the claimant has ever been a citizen of Germany, Japan, Italy, Hungary, Rumania, or Bulgaria, answer also the following question (other persons do not answer):
Has the claimant transacted any business since December 7, 1941, personally or by agent, in territory occupied by any of these nations? Yes No X
(If yes, explain fully in a supplement.)
(f) Claimant's present citizenship (name of country) Japan.
Explain below how your citizenship was acquired—by birth, marriage, naturalization, etc., and give the date. Naturalized citizens should give the number of their naturalization papers. Stateless persons should cite the official act by which they were deprived of citizenship, and supply a copy if possible.
Citizenship acquired by birth.
If the date given above is after December 7, 1941, explain below how your prior citizenship status was acquired: Not applicable.

18 Supplement Attached To And Made A Part Of Notice of Claim of Kaku Nagano For Return Of Property.

1.(b) Claimant is physically present in Japan for the reasons explained below in answer to Item 12 but her permanent residence address is Chicago, Illinois, with her husband, Shinsaku Nagano, who now resides at 1032 North Dearborn Street.

7. The property claimed consists of 8,780 shares of the capital stock of Fuji Trading Company, a corporation of Illinois, subject, however, to the following proviso: The claimant claims as her own only 5,670 of the above shares but there is now pending in United States District Court for the Northern District of Illinois, Eastern Division, in the proceedings entitled, "Shinsaku Nagano, Plaintiff *vs.* Tom C. Clark, Attorney General, as Successor to the Alien Property Custodian, Defendant," General No. 45 C 700, a claim by Shinsaku Nagano (husband of this claimant) as owner of 3,105 of said 8,780 shares, in which proceeding there is pending and undetermined the issue of whether or not Shinsaku Nagano still owns said shares or transferred the same to this claimant as a gift; and if, in said proceedings, it shall be determined by the Court that this claimant is the owner of said 3,105 shares, then, anything hereinbefore to the contrary notwithstanding, this claimant claims as her own the entire 8,780 shares; but if in said proceedings it shall be determined by the Court that said 3,105 shares are the property of Shinsaku Nagano, then this claimant claims as her own only 5,670 of said shares.

8. Item 8 is answered "yes" by reason of the matters hereinafter set forth in answer to Item 7.

9A. The claimant has been temporarily in Japan for reasons of family necessity as given in detail in the statement at Item 12.

11.(d) 3,780 of said shares issued prior to 1932 in
19 part as dividend shares and in part as subscription shares paid for by Shinsaku Nagano. The remaining 5,000 of said 8,780 shares issued April 1, 1932 to claimant contrary to the terms of a 5,000 share stock dividend declared January 3, 1932 to shareholders of record in proportion to their shareholdings.

11.(e) See answer to Item 11.(d).

12. Detailed Statement of Nature of Claim.

Pursuant to Vesting Order No. 813, the Alien Property

Custodian has seized 8,780 shares of the Fuji Trading Company, which shares were represented by certificates standing in the name of the claimant, Kaku Nagano.

Claimant's husband, Shinsaku Nagano, has heretofore filed his individual claim to 3,105 of the above 8,780 shares, upon the ground that said 3,105 shares belonged to him under the terms of their issue as a stock dividend in 1932, and that no present gift of said shares was intended and none was consummated at the time said Shinsaku Nagano caused a certificate for said shares to be issued in the name of claimant herein, Kaku Nagano. This claim is now pending in the United States District Court as set forth in answer to Item 7.

The within claim is not intended to be in conflict with the claim of Shinsaku Nagano, but is based upon the ground that the seizure by the Alien Property Custodian of any shares belonging to Kaku Nagano was unauthorized and contrary to law, for the reasons hereinafter set forth, and that accordingly all shares seized by the Custodian, which are not restored to Shinsaku Nagano as a result of his claim, should be returned to the claimant herein, Kaku Nagano.

The ground upon which the claimant herein, Kaku Nagano, contends that the seizure of the shares of stock in Fuji Trading Company belonging to her was improper and contrary to law, is that claimant was and is a permanent resident of the United States who maintained a domicile in the United States for more than seven consecutive years, and has never relinquished her domicile in this country.

The claimant further states that her absence from the United States, although prolonged, has at all times been temporary and not for the purpose of trading with the enemy or relinquishing her United States domicile. By virtue of the foregoing, claimant alleges that as a matter of law, she is not an "enemy" within the meaning of the Trading with the Enemy Act, as amended, nor a "national of a designated enemy country," within the meaning of the several Executive Orders in amplification of the Trading with the Enemy Act. Claimant further states that her temporary absence from the United States did not make her position substantially different from that of her husband, Shinsaku Nagano, in whose possession remained the shares of stock belonging to claimant herein, and that said Vesting Order was accordingly contrary to the statute.

The facts of claimant's residence in and temporary absence from the United States are as follows:

1. In January, 1914, claimant, then residing in Tokyo, Japan, married Shinsaku Nagano, then a permanent resident of the United States. Following the birth of a daughter, Masako, in Japan in November, 1914, claimant immigrated to the United States in the month of January, 1915 as a permanent resident, leaving her child in the care of its grandmother, claimant's mother. In the year 1916, a son, Shigeo, was born to claimant and her husband at Chicago, Illinois. In the year 1919, claimant with their son, Shigeo, went with her husband to Japan on a voyage made for the purpose of her husband's recuperation from a severe attack of influenza which he sustained during the epidemic of that year; during this visit to Japan their daughter,
21 Takako, was born, but claimant nevertheless returned to the United States with her husband and American born son, Shigeo, leaving their two Japanese born daughters in the care of their grandmother. Claimant remained with her husband in Chicago until the year 1923.

In 1923, an illness of claimant's daughter, Takako, led to a voyage to Japan by the claimant and her husband and on this occasion the decision was made for the claimant to remain in Japan for the years necessary to provide a Japanese education for the two Japanese born daughters and also for the American born son, such education being necessary in order for the son Shigeo to take his place in his father's importing business and for the daughters because of the lack of marriage prospects except among their own race.

Claimant's daughters finished their education and reached marriageable age, Masako in 1932 and Takako in 1937. The expectation of claimant and her husband was that their daughters' marriages would take place soon after their education. In Japan such marriages are arranged for by the parent and a friend acting as intermediary, who is called a matchmaker. The presence of the parent with the unmarried daughter is indispensable. Contrary to the hopes of claimant and her husband the marriages could not be arranged, primarily because so many of the young men were away in the army. In spite of claimant's most anxious efforts since 1932, Takako's marriage was not arranged until 1941. Masako is still unmarried and is past the age ordinarily accepted for marriage.

During the years in which claimant was obliged to remain in Japan (the United States Immigration Act of 1924 took away the right to bring the daughters to the United States) her husband remained a permanent resident of the United States. Claimant considered her home to be with her husband in the United States and as clearly evidenced
22 throughout the large file of correspondence between claimant and her husband (as subpoened by the Justice Department during the pending litigation) claimant has consistently retained her intention to return to her husband and her American residence at the earliest date possible. In the meantime claimant's husband has visited claimant in Japan for a period of several months in each and every year since her departure from the United States in the year of 1924, save only for the years 1932 and 1933, in which she was in the United States, and save also for the years commencing 1942. (Claimant's husband was last with her for seven months in the year 1941.)

C. Lysle Smith, as attorney in fact for the claimant, further states that contemporaneously with his receipt of the Power of Attorney executed by claimant as annexed to this claim, he also received two photographs of claimant taken since the War; that he is personally acquainted with claimant and her older daughter, Masako, both Mrs. Nagano and said older daughter having been in the office of this attorney in fact and also having visited his home during the period of Mrs. Nagano's return to the United States during the years 1932 and 1933; that wartime restrictions not yet removed still prevent the return of claimant to the United States and that in view of the extended period of claimant's physical absence from the United States and her still existing inability to present herself personally to the Justice Department or the Court if need be in support of her claim herewith presented, there are attached hereto said photographs of claimant marked respectively "Exhibit A" and "Exhibit B"; "Exhibit
23 A" consisting of a photograph of claimant and her older daughter, Masako, and "Exhibit B" consisting of a photograph of claimant her said two daughters, Takako and Masako, together with claimant's grandchild, the child of her daughter, Takako.

Claimant has at all times remained loyal to the United States and has not engaged in trade with Japan or participated in the Japanese war effort. During the war

claimant was inactive and lived with her unmarried daughter Masako in their cottage in Shizuoka.

For the foregoing reasons claimant's absence from the United States must, as a matter of law, be considered as a temporary and involuntary absence occasioned by family obligations which claimant had no alternative but to perform. Such absence was not for the purpose of trading in Japan nor for the purpose of residing in Japan.

On the foregoing facts, claimant states that she is neither an "enemy" within the meaning of the Trading with the Enemy Act, nor a national of a designated enemy country.

This claim is made under the appropriate provisions of the Trading with the Enemy Act including particularly the provisions of Section 9(a) as amended, and including all other applicable provisions of the Act which are not inconsistent with the rights conferred upon claimant under said Section 9(a).

Kaku Nagano,
By /s/ C. Lysle Smith,
Her Attorney in Fact.

"EXHIBIT A"

26 State of Illinois, } ss.
County of Cook. }

Affidavit In Re Diligence Of Claimant In Filing Of Claim.

C. Lysle Smith, being first duly sworn on oath deposes and says that as attorney in fact for the claimant, Kaku Nagano, he has executed the Notice of Claim to which this affidavit is attached.

Affiant further says that the time for filing said claim does not expire until August 8, 1948, but due to the fact that the companion claims of Shinsaku Nagano (being claims No. 488, filed March 11, 1943 and No. 6215 filed December 23, 1946, both included in the suit of Shinsaku Nagano under Section 9(a) of the Trading with the Enemy Act, case No. 45 C 700, now pending and undisposed of in the United States District Court for the Northern District of Illinois, Eastern Division) have heretofore been presented and tried before the Vested Claims Committee of the Alien Property Custodian and before the United States District Court, it is considered urgent by this affiant to call to the attention of the Justice Department through the medium of this affidavit the fact that there has been no lack of diligence on the part of the claimant or her attorney in the prompt filing of her claim and to disclose the reasons why it has not heretofore been possible to file the within claim so that it might have been originally tried and disposed of together with said claim of Shinsaku Nagano.

Affiant further says that in the month of December, 1946 (being previous to the trial in the month of January, 1947 of said claim of Shinsaku Nagano) this affiant prepared and forwarded to Japan, for execution by said
27 Kaku Nagano, the original Power of Attorney which is dated and acknowledged before the United States Consul at Yokohama, Japan on January 4, 1947 and now attached to the within claim; that notwithstanding the execution of said Power of Attorney on the date aforesaid the wartime restrictions relating to the transmission of commercial documents prohibited the forwarding of said Power of Attorney to affiant so that the same was not received until on or about October 1, 1947. Previous to

the receipt of said Power of Attorney affiant had no written authority from said Kaku Nakano as required by the regulations of the Alien Property Custodian and could not obtain any such authority.

Further affiant sayeth not.

/s/ C. Lysle Smith.

Subscribed and Sworn to before me this 3rd day of December, A. D. 1947.

/s/ Ruth Gifford,
Notary Public.

(Seal)

28 Certificate of Acknowledgment of Execution of Document.

Japan
(Country)
City of Yokohama
(County or other political division)
American Consular Service
(Name of consular office)
} ss.

Meredith Weatherby, Consul of the United States of America at Yokohama, Japan, duly commissioned and qualified, do hereby certify that on this 4th day of January, 1947, before me personally appeared Kaku Nagano, to me personally known, and known to me to be the individual described in, whose name is subscribed to, and who executed the annexed instrument, and being informed by me of the contents of said instrument does duly acknowledge to me that she executed the same freely and voluntarily for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and official seal the day and year last above written.

/s/ Meredith Weatherby,
Consul of the United States of America.

(Seal)

29 Power of Attorney.

Know All Men By These Presents, That I, Kaku Nagano, of Chicago, Illinois, but temporarily residing in Shizuoka, Japan, do hereby constitute and appoint Shinsaku Nagano, C. Lysle Smith and John Alden Powers, and each of them, jointly and severally, my true and lawful attorneys for me and in my name, place and stead,

1. To demand, sue for, collect, recover and receive all claims, monies, securities, interest and demands whatsoever now due or that may hereafter be due or belong to me, and to make, execute and deliver receipt, releases or other discharges therefor, under seal or otherwise;

2. To sell any and all shares of stock now or hereafter belonging to me, and to make, execute and deliver an assignment or assignments of any such shares of stock;

3. To appear for and represent me before the United States Department of Justice in connection with any claim which I may have or assert under the provisions of the Trading with the Enemy Act, or otherwise, in relation to any property of mine, including any shares of stock which I may own in Fuji Trading Co., an Illinois corporation, which property the United States Alien Property Custodian may have vested or claimed to vest; and also before the United States Immigration Service Division of said United States Department of Justice, or before the United States Department of State, or any other department which may have jurisdiction or authority over my status and rights under the immigration laws of the United States;

and before any unit, division, agent or employee of
30 any of said departments, divisions or bureaus; and

also before the courts of the United States in relation to any of said matters; and to execute and file any claims, notices, legal pleadings, applications, appeals appearances, bonds or any other papers or documents whatever pertaining to any of such matters;

4. To constitute and appoint in the place and stead of any or either of them and as a substitute for any or either of them in any of said matters, one attorney or more for me, with full power of revocation; and

5. Without in anywise limiting the foregoing, generally to do, execute and perform any other act, deed, matter or thing whatsoever that ought to be done, executed and performed, or that in the opinion of my said attorney or

attorneys ought to be done, executed or performed in and about the premises, of every nature and kind whatsoever, as fully and effectually as I could do if personally present.

And I, the said Kaku Nagano, do hereby ratify and confirm whatsoever my said attorney or attorneys, or any or either of them, or his substitute or substitutes, shall do or cause to be done in or about the premises by virtue of this power of attorney.

In Witness Whereof, I have hereunto set my hand and seal in the City of Yokohama, Prefecture of Kanagawa, Japan, on this 4th day of January, 1947.

/s/ Kaku Nagano. (Seal)

In the presence of:
Joseph M. Luring,
Tetsuko K. Suzuki.

31 Endorsed: In the United States District Court. * * (Caption—47-C-1830) * * Complaint in Equity Under Section 9(a) of the Trading With The Enemy Act, As Amended. Filed Dec. 19, 1947 at 2:50 o'clock P. M. Roy H. Johnson, Clerk.

32 And afterwards on, to wit, the 2nd day of March, 1948, came the Defendant by his attorneys and filed in the Clerk's office of said Court his certain Motion For Judgment Dismissing The Complaint With Prejudice in words and figures following, to wit:

33 In the United States District Court.
* * (Caption—47-C-1830) * *

MOTION FOR JUDGMENT DISMISSING THE COMPLAINT WITH PREJUDICE.

The defendant by his attorney, Otto Kerner, Jr., United States Attorney for the Northern District of Illinois, moves the Court for judgment dismissing the complaint herein with prejudice on the grounds that the Court lacks jurisdiction of the action and that the complaint fails to state a claim upon which relief can be granted, in that it appears from the face of the complaint and from the annexed copy of the manifest of the S. S. Hiye Maru, certified on April 25, 1946 by Joseph Savoretti, Assistant

Commissioner, Immigration and Naturalization Service, that:

(1) the jurisdiction of this Court purports to be invoked and the claim purports to arise under the Trading With the Enemy Act, as amended;

(2) the plaintiff is an enemy within the definition of the said Act and, therefore, cannot maintain this suit under the said Act; and

34 (3) the plaintiff is a national of a designated enemy country (Japan) within the meaning of Executive Order No. 9193 (7 F. R. 5205) and, therefore, cannot maintain this suit under the said Act.

Dated:

Otto Kerner, Jr.,
United States District Attorney for the Northern District of Illinois,

David L. Bazelon,
Assistant Attorney General, Director, Office of Alien Property,

Thomas E. Harris,
Special Assistant to the Attorney General,

George B. Searls,
Chief Trial Attorney,

Harold Ungar,
Attorney,

United States Department of Justice,
Washington 25, D. C.,
Attorneys for Defendant.

35 UNITED STATES OF AMERICA.

Department of Justice,

Immigration and Naturalization Service.

April 25, 1946.

Pursuant to Title 28, Section 661, U. S. Code (Sec. 882, Revised Statutes), I Hereby Certify that the annexed document is a true copy of the manifest of the SS Hiye Maru which arrived at the port of Seattle, Washington on September 20, 1932, in so far as it relates to Kaku Nagano and Shinsaku Nagano, the original of which is contained in the records of the Immigration and Naturalization Service, Department of Justice, file No. 17472-2.

In Witness Whereof I have hereunto set my hand and caused the seal of the Department of Justice, Immigration and Naturalization Service, to be affixed, on the year and day first above written.

Joseph Savoretti,

(Seal) *Assistant Commissioner, Immigration and Naturalization Service.*

LMS/ltf

List 2

LIST OR MANIFE

ALL ALIENS arriving at a port of continental United States from a foreign port or a port of the

S. S. _____ . Passengers

1	2	3		4	5	6	7	8		9
No. on List	HEAD-TAX STATUS (To be filled in by an official)	NAME IN FULL		Age		Sex	Calling or occupation	Able to		Nationality. Country of which citizen or subject
		Family name	Given name	Yrs.	Mos.			Read (or spell his name if unable to read or write)	Write	
3		Left U.S. via Cuba Jan. 6-20-27						U "Conte Rosso"		
4		Left U.S. via Cuba Jan. 6-20-27						U "Conte Rosso"		

Ray Ellis
Left U.S.

Total passengers . . . . .
U.S. citizens . . . . .
Aliens . . . . .

List 7

LIST OR MANIFEST OF ALIEN PASSENGERS FOR THE UNITED

ALL ALIENS arriving at a port of continental United States from a foreign port or a port of the insular possessions of the United States, and all aliens arriving at a port of said insular possessions from a foreign port, a part of continental United
This (pink) sheet is for the listing of

S.S. _____ . Passengers sailing from _____ , 19__

1	2	3		4	5	6	7	8		9	10	11		12	13		14		15	
No.	HEAD-TAX STATUS (The column for use of Government officials only)	NAME IN FULL		Age			Calling or occupation	Able to —		Nationality (Country of which citizen or subject)	† Race or people	Place of birth		Immigration Visa (Passport Visa, or Reentry Permit number	Issued		Date immigration certificate of landing, etc. (This column for use of Government officials only)	*Last permanent residence	
		Family name	Given name	Yrs.	Mos.	Sex; Married or single		Read	Write (express in a complete sentence in the space)			Country	City or town, State, Province or District	Date, number, and port of issue (if an alien)	Place	Date		Country	City or town, State, Province or District
3		Left U.S. on ma boat L. 6-20-33																		
4		Left U.S. on ma boat L. 6-20-33																		

All

Roy Wilcox
2:7 Wilson

Judgment

Total passengers . . . . .
U.S. citizens . . . . .
Aliens . . . . .

* Permanent residence within the meaning of this manifest shall be actual or intended not
† List of races will be found on the back of this sheet.

List 6.

STATES IMMIGRATION OFFICER AT PORT OF ARRIVAL

FIRST-CABIN PASSENGERS ONLY

Arriving at Port of Seattle, Wash., Sept., 20th, 19 30.

9	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37
1	[redacted]																										
2	[redacted]																										
3	[redacted]																										
4	[redacted]																										
5	[redacted]																										
6	[redacted]																										
7	[redacted]																										
8	[redacted]																										
9	[redacted]																										
10	[redacted]																										
11	[redacted]																										
12	[redacted]																										
13	[redacted]																										
14	[redacted]																										
15	[redacted]																										
16	[redacted]																										
17	[redacted]																										
18	[redacted]																										
19	[redacted]																										
20	[redacted]																										
21	[redacted]																										
22	[redacted]																										
23	[redacted]																										
24	[redacted]																										
25	[redacted]																										
26	[redacted]																										
27	[redacted]																										
28	[redacted]																										
29	[redacted]																										
30	[redacted]																										

Note.—Full text of section 20 is as follows: Whether a person who is a citizen of or owes allegiance to the country or to any form of government of the United States or of any of its insular possessions, or who is a subject or citizen of any country, state, or government, or political subdivision thereof, whether entering the United States for permanent residence or temporarily, and whether entering as a passenger, or as a member of a railroad crew, or otherwise, and whether admitted or not, who shall be found unlawfully in the United States or any place subject to the jurisdiction thereof, shall be taken into custody and deported in the manner provided by section 19 of this act, upon the warrant of the Secretary of Labor, unless he shall prove to the satisfaction of the Secretary of Labor that he entered the United States prior to July 1, 1924, or that he was not at the time of entry a member of the class of persons excluded by section 13 of this act, or that he was lawfully admitted to the United States for permanent residence, or that he has resided therein continuously since entry, and that he is not at the time of his application for relief under this section a member of any of the classes of persons excluded by section 13 of this act, or that he has been granted a discretionary order of the Secretary of Labor suspending his deportation, or that he has become a naturalized citizen of the United States.

38 And afterwards, to wit, on the 22nd day of December, 1949, being one of the days of the regular December term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable William J. Campbell, District Judge, appears the following entry, to wit:

39 IN THE UNITED STATES DISTRICT COURT.
* * (Caption—47-C-1830) * *

On stipulation of the parties by counsel filed herein it is Ordered that J. Howard McGrath, Attorney General of the United States as Successor to the Alien Property Custodian, be and he is hereby substituted in place and stead of Tom C. Clark, Attorney General, as Successor to the Alien Property Custodian, as defendant in this cause.

40 And afterwards on, to wit, the 16th day of March, 1950, there was filed in the Clerk's office of said Court a certain Memorandum Of The Court in words and figures following, to wit:

41 IN THE UNITED STATES DISTRICT COURT.
* * (Caption—47-C-1830) * *

MEMORANDUM.

Campbell, District Judge.

This is a companion case to Shinsaku Nagano *vs* Tom C. Clark, 45 C 700, in which this court held that Shinsaku Nagano, husband of the plaintiff herein, could not recover 8,780 shares of stock in the Fuji Trading Company which on the books of the corporation had stood in the name of Kaku Nagano, a Japanese national living in Japan, and which had been vested by the Alien Property Custodian in 1943 as the property of a national of a designated enemy country. In the present case, Kaku Nagano brings suit under Section 9(a) of the Trading with the Enemy Act to recover these shares.

The defendant has moved for judgment dismissing the

complaint with prejudice on the ground that the plaintiff, as a "resident within" Japan since 1924, except for a visit to the United States in 1932-33, is an enemy as defined in Section 2 of the Trading with the Enemy Act and hence may not maintain an action under Section 9(a) of the act to establish her right, title and interest in said shares of stock; and that the plaintiff, as a Japanese national, is among the class of persons whose property the President has authorized to be vested and she is therefore sufficiently tainted by enemy associations to be barred, under *Clark* v. *Uebersee Finanz-Korporation,* 332 U. S. 480 (1947), from maintaining this suit.

The plaintiff's opposition to the present motion is based on several grounds. First, plaintiff contends that she should not properly be regarded as an "enemy" under Section 2 of the act because despite her long stay in Japan, her domicile remained in the United States with her husband. She alleges that her long stay in Japan was not really voluntary but was required by the family necessity of giving her three children a Japanese education and of arranging marriages in the Japanese tradition for her two daughters who had been born in Japan and hence were not citizens of the United States. Second, plaintiff argues that the vesting of the property involved here was wholly outside the purposes of the act, since it bore no relation to the ability of this country or of the enemy to wage war.

42 With respect to the first ground of her argument, plaintiff contends that enemy nationality and physical presence are only indicia of enemy character, and that since the decision in *Clark* v. *Uebersee Finanz-Korporation,* 332 U. S. 480 (1947), held that the Government could show the enemy taint attaching to apparently neutral interests, it follows that one who meets the statutory definition of an enemy may show the lack of any real enemy taint. This argument is non-sequitur and, as I read the Uebersee decision, it directly refutes this argument. In that case, the Supreme Court said that the definitions in Section 2 of the Trading with the Enemy Act are "merely illustrative". 332 U. S. at 488-9. Thus it appears clear to me that the meaning of the Uebersee case in this regard is that although the Government may show facts indicating an enemy taint not strictly within the definition of "enemy" in Section 2, facts bringing a party squarely within the statutory definition may not be disregarded.

Next, I think that the facts of this case bring the plaintiff squarely within the statutory definition of "enemy", her long residence in Japan making her a "resident within" the territory of an enemy nation, regardless of the possibility that her domicile remained at all times in the United States where her husband presumably had his domicile. Although it has been held that for one to be "resident within" enemy territory, something more than mere physical presence is required (*Josephberg* v. *Markham*, 152 F. 2nd 644 (CCA 2d 1945)), I do not think that the alleged family necessity relied on by plaintiff as an explanation for her long stay in Japan is sufficient to bring her within cases which have refused to apply the definition of "enemy" literally because of an element of compulsion, or at least of lack of free will, in the case. In the Josephberg case, supra, the court held that the mental incapacity of the alleged "enemy", a naturalized American citizen, made it impossible to say that his prolonged stay in Italy was voluntary; in *Stadtmuller* v. *Miller*, 11 F. 2d 732 (CCA 2d 1926), the court held that a German citizen, a resident of the United States, who in the course of traveling for his health entered Germany to settle his parents' estate on his way back to the United States and was prevented by military regulations from leaving Germany, was a "transient" and hence not a "resident within" Germany. On the contrary, the facts alleged by plaintiff herein show that her residence in Japan was deliberate, whatever its motivation.

The second ground of the plaintiff's argument is based on the premise that the purpose of a suit under Section 9(a) of the Trading with the Enemy Act is to determine whether the vesting of the plaintiff's property served any purpose of the Act, and that such purpose is either to assist the war effort of the United States, or to hamper the war effort of the enemy. In this connection, plaintiff argues that since the corporation whose stock was involved engaged in the manufacture of food sauces, and since control of the corporation was at all times in the hands of the plaintiff's husband in Chicago, this court should hold that the vesting was erroneous because it had no effect on the war effort of either belligerent. Plaintiff's argument, I think, misconstrues both the general purpose of the Act as a war measure and the purpose of a suit to recover vested property under Section 9(a). The scope of the power to vest alien property under the Act is not

limited to property useful as war industries. The purpose of a suit to recover, although a suit in equity, is not to provide judicial review of every aspect of the executive action which vested alien property, but simply to establish a right, title, or interest to the property in
43 one not an enemy or an ally of an enemy. Furthermore, plaintiff's argument that property in friendly hands (i. e., in the hands of plaintiff's husband, a Japanese national resident in the United States) was not intended by Congress to be seized under the Act, if adopted, would virtually destroy the Act, because it is only property in the United States or in territory subject to the jurisdiction of the United States which, as a practical matter, can be seized, and such property will usually, if not always, be in the custody of one at least ostensibly friendly to the United States. It is therefore the enemy ownership of the property which determines whether it can be seized, the attitude of the custodian being immaterial. Obviously, enemy property located in an enemy country would be beyond the effective jurisdiction of the United States to seize; and property present in the United States which is owned by enemy aliens resident in enemy countries will usually, if not always, be in the hands of friendly custodians, since enemy aliens present in the United States and actively hostile to this country would be interned and thus in no position to act as custodians.

The defendant has also called the court's attention to Section 12 of the War Claims Act of 1948 (Public Law 896, 80th Congress, 2nd Sess.) which amends the Trading with the Enemy Act by adding thereto Section 39. This section provides that no property or interest therein of Germany and Japan or of any national of either country vested by any officer or agency of the United States shall be returned to the former owners or their successors and no compensation shall be paid them. The defendant has suggested that this section prevents recovery by the plaintiff herein because she is a national of Japan. I do not think this section is relevant to a case brought under Section 9(a) of the Act. If a plaintiff in a Section 9(a) suit is an enemy or an ally of an enemy, the suit fails under the provisions of Section 9(a), not because of the provisions of the new Section 39. The real purpose of the new Section 39 is indicated by the provision that the net proceeds of property vested under the Act, after administration, liquidation, and disposition pursuant to the

provisions of the War Claims Act of 1948, shall be paid into the Treasury, in which, under Section 13(a) of the War Claims Act of 1948, there is created a trust fund known as the War Claims Fund consisting of all sums paid into the Treasury pursuant to the provisions of Section 39 of the Trading with the Enemy Act. In connection with other sections of the War Claims Act, these sections reveal a third purpose not mentioned by plaintiff among the reason for vesting enemy property, namely, the application of enemy assets to the relief of the victims of enemy aggression.

Since the plaintiff is an enemy as defined in Section 2 of the Trading with the Enemy Act, she cannot maintain a suit under Section 9(a) to recover property vested by the Alien Property Custodian. I have reached this conclusion after considerable study and with some reluctance, since it involves the confiscation of a substantial portion of the life work of the plaintiff's husband. It is unfortunate that Congress, in determining the national policy respecting the vesting of enemy property, has not taken into account the fact that because of its prior immigration and naturalization policy, Japanese have not been able to become naturalized citizens and hence are especially
44 vulnerable to the technical definitions under the Trading with the Enemy Act. A naturalized American citizen in the position of the plaintiff herein might have had constitutional protection against the sweeping definition of "enemy" under the Act. Compare *Josephberg* v. *Markham*, supra.

The defendant's motion is granted, and this action is accordingly dismissed.

Campbell,
Judge.

March 16, 1950.

49 United States of America, } ss.
Northern District of Illinois. }

Certificate of Mailing.

I, Roy H. Johnson, Clerk of the United States District Court in and for the Northern District of Illinois, do hereby certify that on May 12, 1950, in accordance with Rule 73 (b) of the Federal Rules of Civil Procedure a copy of the foregoing Notice of Appeal was mailed to Hon. Otto Kerner, Jr., U. S. Attorney, 450 U. S. Court House, Chicago 4, Illinois.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Chicago, Illinois, this 12th day of May, A. D. 1950.

Roy H. Johnson,
Clerk,

(Seal)

By Gizella Butcher,
Deputy Clerk.

50 IN THE UNITED STATES DISTRICT COURT.
* * (Caption—47-C-1830) * *

APPEAL BOND.

Kaku Nagano, Plaintiff-Appellant herein, by C. Lysle Smith, her attorney and duly authorized agent in this behalf, and Maryland Casualty Company, a Maryland Corporation, surety, appearing and submitting to the jurisdiction of the court, hereby undertake for themselves and each of them, their and each of their heirs, executors, administrators, successors and assigns, to make good all taxable costs and charges, not exceeding the sum of $250.00, that the Defendant-Appellee, J. Howard McGrath, Attorney General of the United States, as Successor to the Alien Property Custodian, may be put to or allowed if the appeal is dismissed or the judgment affirmed, or such costs as the United States Court of Appeals for the Seventh Circuit may award if the judgment is modified.

The said surety hereby irrevocably appoints the clerk of this court as its agent upon whom any papers affecting its liability on this undertaking may be served.

51 Signed, sealed and delivered this 11th day of May, 1950.

Kaku Nagano,
Plaintiff-Appellant.
By C. Lysle Smith,
Her attorney and duly authorized agent in this behalf.
Maryland Casualty Company,
Surety,
By Philip Weinstein,
(Seal) *Its duly authorized agent and attorney in fact.*

52 **Certified Copy**

Know All Men By These Presents: That Maryland Casualty Company, a corporation created by and existing under the laws of the State of Maryland, of Baltimore City, Maryland, being authorized by its Charter to transact a general surety, casualty, and fidelity business, and qualified to act as surety on bonds to the United States of America, and authorized to transact its business in the State of Illinois, in pursuance of the authority set forth in Section 13 of Article IV of its By-laws, from which the following is a true extract, and which Section has not been amended nor rescinded:

"The President or any Vice-President may, by written instrument under the attested corporate seal, appoint attorneys-in-fact with authority to execute bonds, policies, recognizances, stipulations, undertakings, or other like instruments on behalf of the Corporation, and may authorize any officer or any such attorney-in-fact to affix the corporate seal thereto,"

does hereby nominate, constitute and appoint Philip Weinstein and Thomas E. Ryan, each with full power to act alone, of Chicago, State of Illinois, its Attorney-in-Fact to make, execute, seal, and deliver on its behalf as Surety, and as its act and deed, any and all bonds, recognizances, stipulations, undertakings, and other like instruments (except bonds guaranteeing leaseholds, charter parties, payment of rentals, treasurers, sheriffs, constables, and public officials collecting taxes.)

Such bonds, recognizances, stipulations, undertakings, or other like instruments shall be binding upon said Company as fully and to all intents and purposes as if such instruments had been duly executed and acknowledged and delivered by the authorized officers of the Company when duly executed by either one of the aforesaid attorneys in fact.

This instrument revokes a power of attorney granted Phillip Weinstein and Thomas E. Ryan of Chicago, Illinois, dated March 23, 1939.

In Witness Whereof, Maryland Casualty Company has

caused these presents to be executed in its name and on its behalf and its Corporate Seal to be hereunto affixed and attested by its officers thereunto duly authorized, this 12th day of July, 1940, at Baltimore City, Maryland.

Maryland Casualty Company,
By (Signed) David C. Gibson,
Vice-President.

(Corporate Seal)

Attest:
(Signed) Wm. H. Krause,
Assistant Secretary.

State of Maryland }
Baltimore City } ss.

On this 12th day of July, A. D. 1940, before the subscriber, a Notary Public of the State of Maryland, in and for Baltimore City, duly commissioned and qualified, came David C. Gibson, Vice-President, and Wm. H. Krause, Assistant Secretary, of Maryland Casualty Company, to me personally known and known to be the officers described in, and who executed the preceding instrument; and they each acknowledged the execution of the same; and, being by me duly sworn, they severally and each for himself deposed and said that they respectively hold the offices in said Corporation as indicated, that the Seal affixed to the preceding instrument is the Corporate Seal of said Corporation, and that the said Corporate Seal, and their signatures, as such officers, were duly affixed and subscribed to the said instrument pursuant to all due corporate authorization.

In Witness Whereof, I have hereunto set my hand and affixed my Official Seal, at Baltimore City, the day and year first above written.

(Notarial Seal) (Signed) J. Wm. Frank,
Notary Public.

My commission expires May 5, 1941.

Overleaf is certificate as to foregoing being a full and correct copy.

Certificate.

I, an Assistant Secretary of the Maryland Casualty Company, do hereby certify that I have compared the copy of the Power of Attorney overleaf with the original now on file among the records of the Home Office of the Company and in my custody, and that the same is a full, true and correct copy, and that the Power of Attorney has not been revoked, amended or abridged, and is now in full force and effect.

Given under my hand as Assistant Secretary, and the Seal of the Company, at Baltimore City, Md., this 11th day of May, A. D. 1950.

(Seal) Lillian A. Algie,
Assistant Secretary.

53 And afterwards on, to wit, the 22nd day of May, 1950, came the Plaintiff-Appellant by his attorneys and filed in the Clerk's office of said Court his certain Statement of Points Relied on Upon Appeal in words and figures following, to wit:

54 In the United States District Court.
* * (Caption—47-C-1830) * *

STATEMENT OF POINTS RELIED ON UPON APPEAL.

Comes now Kaku Nagano, plaintiff-appellant herein, and files the following assignment of errors upon which she will rely in the prosecution of the appeal in this cause from the order of the court dismissing this cause entered on March 16, 1950:

1. The Court erred in dismissing the complaint.

2. The Court erred in finding as a conclusion of law that under the allegations of the complaint plaintiff is an "enemy" within the meaning of the Trading with the Enemy Act.

3. The Court erred in finding as a conclusion of law that under the allegations of the complaint plaintiff is a

person who may not maintain an action under Section 9(a) of the Trading with the Enemy Act to recover her property vested by the Alien Property Custodian.

C. Lysle Smith,
Attorney for Kaku Nagano,
Plaintiff-Appellant.

Dated: May 22, 1950.

Service of the above and foregoing Statement of Points Relied on Upon Appeal accepted and acknowledged this 22nd day of May, 1950.

Otto Kerner, Jr.,
United States Attorney.
Attorney for J. Howard McGrath,
Attorney General, as Successor to
the Alien Property Custodian,
Defendant-Appellee.

And on the same day, to wit, the 22nd day of May, 1950, came the Plaintiff-Appellant by his attorneys and filed in the Clerk's office of said Court his certain Designation of Contents of Record on Appeal in words and figures following, to wit:

IN THE UNITED STATES DISTRICT COURT.

* * (Caption—47-C-1830) * *

DESIGNATION OF CONTENTS OF RECORD ON APPEAL.

To the Clerk of said Court:

You are hereby requested to prepare, certify and transmit to the Clerk of the United States Court of Appeals for the Seventh Circuit a transcript of record in the above entitled cause as required by law and by the rules of said Court, and to include in said transcript of record the following documents, or certified copies thereof, to wit:

1. The complaint, filed December 19, 1947.
2. Motion for judgment dismissing the complaint with prejudice filed March 2, 1948.
3. Order entered December 22, 1949, substituting as defendant J. Howard McGrath, Attorney General of the

United States, as successor to the Alien Property Custodian in the place and stead of Tom C. Clark, Attorney General, as successor to the Alien Property Custodian.

4. Memorandum of the court filed March 16, 1950.

5. Order dismissing cause pursuant to memorandum, entered March 16, 1950.

6. Notice of Appeal, filed May 12, 1950.

7. Bond for costs, filed May 12, 1950.

58 8. Order authorizing the Clerk of the United States District Court to detach the original exhibits from the complaint and from the motion of the Defendant for judgment dismissing the complaint and to cause said exhibits to be incorporated in the record on appeal.

9. Statement of points relied on upon appeal.

10. This designation of contents of record on appeal.

11. Clerk's certificate.

C. Lysle Smith,
Attorney for Kaku Nagano, Plaintiff-Appellant.

Dated: May 22, 1950.

Service of the above and foregoing designation of contents of record on appeal accepted and acknowledged this 22nd day of May, 1950.

Otto Kerner, Jr.,
United States Attorney.
Attorney for J. Howard McGrath, Attorney General, as Successor to the Alien Property Custodian, Defendant-Appellee.

59 United States of America, }
Northern District of Illinois. } ss.

I, Roy H. Johnson, Clerk of the United States District Court for the Northern District of Illinois, do hereby certify the above and foregoing to be a true and complete transcript of the proceedings had of record made in accordance with the Designation filed in this Court in the cause entitled: Kaku Nagano, Plaintiff, vs. J. Howard McGrath, Attorney General, as Successor to the Alien Property Custodian, Defendant, No. 47-C-1830, as the same appears from the original records and files thereof now remaining among the records of the said Court in my office.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Chicago, Illinois, this 19th day of June, 1950.

Roy H. Johnson,
Clerk,

(Seal)

By Gizella Butcher,
Deputy Clerk.

UNITED STATES COURT OF APPEALS

For the Seventh Circuit,

Chicago 10, Illinois.

September 18, 1950.

Before:

Hon. Walter C. Lindley, Circuit Judge.

Kaku Nagano, *Plaintiff-Appellant,* vs. J. Howard McGrath, Attorney General, As Successor To The Alien Property Custodian, *Defendant-Appellee.*	Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

10192

On petition of counsel for the plaintiff-appellant, it is ordered that the record in this cause be supplemented by adding thereto the order of the Immigration and Naturalization Service of the United States Department of Justice finding and determining that petitioner Kaku Nagano has re-entered the United States and that she is a permanent resident of this country whose absence therefrom was temporary only.

It is further ordered that that part of the plaintiff-appellant's petition which seeks the entry of an order remanding the cause to the District Court for entry of an order to return the vested property be, and the same is hereby, denied without prejudice to counsel's right to renew the motion at the time the cause is heard on the merits.

UNITED STATES DEPARTMENT OF JUSTICE.

Immigration and Naturalization Service.

File: A-7415253—Chicago (0900/55907) (No Appeal)

In re: Kaku Nagano Aug. 11, 1950.

In Exclusion Proceedings

In Behalf Of Appellant:

C. Lysle Smith, Esquire
First National Bank Building
Chicago, 3, Illinois

Excluded:

Act of 1924—Not nonquota immigrant as specified in her immigration visa.

Act of 1924—Ineligible to citizenship.

Application: Admission for permanent residence.

Detention Status: Not shown.

Discussion: This record relates to a 57-year-old female, native and citizen of Japan, who arrived from Japan, via plane, and applied for admission at Chicago, Illinois on June 26, 1950. She was found inadmissible on the above grounds by a Board of Special Inquiry and her case has been forwarded for consideration on appeal.

The record establishes that the appellant was first lawfully admitted to the United States for permanent residence on October 27, 1915 (Ex. 2). She then visited Japan for several months and was readmitted to the United States for permanent residence on October 24, 1919 (Ex. 3). The appellant testified that she left the United States in 1924 returning to this country some time about September 20, 1929 at the port of Seattle, Washington. This arrival cannot be verified. She remained in the United States until about April 1930 when she returned to Japan. Thereafter, she last entered the United States on September 8, 1932 as the wife of a treaty merchant under the provisions of Section 3(6) of the Immigration Act of 1924 (Ex. 4). Her testimony indicates that she last departed from the United States on June 20, 1933 (p. 8). She now seeks admission for permanent residence and is in possession of a nonquota immigration visa issued to her as a returning resident

under the provisions of Section 4(b) of the Immigration Act of 1924.

The Board of Special Inquiry's decision to exclude is predicated solely on the ground that the appellant is not entitled to a returning resident status by reason of the fact that at the time of her last entry to the United States on Sepember 20, 1932 she was admitted as the nonimmigrant wife of a treaty trader. There is no intimation in the findings of the Board of Special Inquiry that the appellant ever abandoned her domicile in the United States, and there is ample evidence of record to support the conclusion reached by the Board of Special Inquiry and the American Consular Service that the appellant is returning from a temporary visit abroad (Ex. 5). The issue is therefore narrowed to whether the appellant's entry as a nonimmigrant on September 20, 1932 served to divest her of her status as a lawful resident of the United States. We shall limit this discussion to that question.

The appellant's husband has been a lawful resident of the United States since October 2, 1906. He is the president and principal stockholder of the Fuji Trading Company located in Chicago, Illinois. He has made 24 or more trips to Japan all of his absences being for a period of less than one year. Commencing with his trip in September 1924 he secured a reentry permit each time he departed from the United States. In April 1928, however, he made an application for a reentry permit but departed for Japan before the reentry permit was received by the port. The reentry permit was returned to the Central Office. During the course of a hearing accorded to him under a warrant of arrest he testified that he assumed that the reentry permit would be forwarded to the American Consul at Yokohama, Japan. The Consul, however, advised him that such was not the proper procedure and issued him a nonimmigrant visa as a treaty trader merchant under Section 3(6) of the Immigration Act of 1924 and advised him to adjust his status after his return to the United States. He attempted to adjust his status but his request was denied by the then Board of Review on April 13, 1929. Thereafter, he made several trips to Japan reentering each time as a 3(6) treaty merchant or visitor for business. On February 4, 1948 as a result of deportation proceedings, this Service concluded that the residence in the United States of the appellant's husband had always been that of a per-

manent nature and that his trips to Japan were merely temporary visits. As a result, it was directed that his last entry on November 2, 1941 he regarded as an admission as a returning resident, and that all the intervening entries from September 29, 1928 to October 8, 1940, inclusive, be likewise regarded as admissions as a returning resident within the provisions of Section 13(b) of the Immigration Act of 1924, conditioned upon a waiver of the documentary requirements by the Department of State. It was further directed that the warrant of arrest be cancelled and the proceedings terminated.

The evidence of record in this case indicates that the causes leading up to the appellant's apparent acceptance of the status of the wife of a treaty trader in lieu of that of a returning resident on the occasion of her entries in September 1929 and September 8, 1932, were in substance those which led to her husband's classification as a treaty trader, as previously discussed. She has never voluntarily relinquished her domicile in the United States and, as in the case of her husband, we find the provisions of Section 13(b) of the Immigration Act of 1924 applicable to the 1928 and 1932 entries referred to. They will be considered, nunc pro tunc, as showing her admission for permanent residence as a returning resident. The effect thereof will be to render the present grounds of inadmissibility inapplicable.

Since disposition of this case is in consonance with the arguments raised by Counsel, as well as the relief sought, it is deemed unnecessary to dwell upon them.

Order: It is ordered that the appellant's entries at the port of Seattle, Washington about September 20, 1929 and on September 8, 1932 be regarded, nunc pro tunc, as admissions for permanent residence as a returning resident under the provisions of Section 13(b) of the Immigration Act of May 26, 1934, documentary requirements being waived.

It Is Further Ordered that the appellant's appeal be sustained.

A. C. Devaney,
Assistant Commissioner, Adjudications Division.

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Chicago 10, Illinois

I, KENNETH J. CARRICK, Clerk of the United States Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages contain a true copy of the printed transcript of record, filed September 26, 1950, in:

Cause No. 10192

KAKU NAGANO, PLAINTIFF-APPELLANT

vs.

J. HOWARD MCGRATH, ATTORNEY GENERAL, ETC., DEFENDANT-APPELLEE

as the same remains upon the files and records of the United States Court of Appeals for the Seventh Circuit.

IN TESTIMONY WHEREOF I hereunto subscribe my name and affix the seal of said United States Court of Appeals for the Seventh Circuit, at the City of Chicago, this sixth day of June, A. D. 1951.

[SEAL.] (S.) KENNETH J. CARRICK,
Clerk of the United States Court of Appeals for the Seventh Circuit.

At a regular term of the United States Court of Appeals for the Seventh Circuit, held in the City of Chicago and begun on the third day of October in the year of our Lord one thousand nine hundred and fifty, and of our Independence the one hundred seventy-fifth:

No. 10192

KAKU NAGANO, PLAINTIFF-APPELLANT

vs.

J. HOWARD MCGRATH, ATTORNEY GENERAL, ETC., DEFENDANT-APPELLEE

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division

And afterward, to-wit, on the twenty-sixth day of February, 1951, there was filed in the office of the Clerk of this Court the opinion of

the Court, which said opinion is in the words and figures following, to-wit:

IN THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

October Term, 1950, January Session, 1951

No. 10192

KAKU NAGANO, PLAINTIFF-APPELLANT

vs.

J. HOWARD MCGRATH, ATTORNEY GENERAL, ETC., DEFENDANT-APPELLEE

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division

February 26, 1951

Before DUFFY, FINNEGAN and LINDLEY, *Circuit Judges*

LINDLEY, *Circuit Judge:*

The District Court having allowed defendant's motion to dismiss plaintiff's complaint, plaintiff appeals. Consequently, our only question is whether, by the averments of the complaint, a good and sufficient cause of action was presented.

The averments are in substance as follows: Plaintiff, a native of Japan, is a permanent resident of the United States, and has resided within this country for a period in excess of seven consecutive years following 1915, when she first entered, and has never relinquished that residence. She is married to Shinsaku Nagano, likewise a native of Japan, who immigrated to the United States as a permanent resident in the year 1906 and whose permanent residence, both legally and physically, has continued at all times in Chicago, Illinois. Plaintiff has been but temporarily in Japan, without intending at any time to abandon or relinquish her permanent residence in the United States. She is not an enemy or an ally of an enemy or a national of a designated enemy country within the meaning of the Trading with the Enemy Act.

The suit is brought against the Attorney General as successor to the Alien Property Custodian for the purpose of establishing plaintiff's ownership in certain shares of stock of The Fuji Trading Company, which have been taken over by the Custodian on the ground that plaintiff is a national of Japan, a designated enemy country.

The Fuji Trading Company is an Illinois corporation having its principal place of business in Chicago, and is engaged in the manufacture and sale of certain oriental food products. The enterprise was founded in 1910 by plaintiff's husband and has been carried on since that date under his sole management and direction. It is a leading company within the United States in terms of volume and reputation of product as compared with others engaged in the same line of business. The corporation was organized in 1912, and since that time, the husband has been its president and majority stockholder.

Prior to January 3, 1932, the total capital stock of the company consisted of 10,000 shares of common stock, ownership of which was as follows: Shinsaku Nagano, 6210 shares, plaintiff, 3780 shares, and the brother of plaintiff, one Miya, 10 shares. On January 3, 1932, the corporation declared a stock dividend of 5000 shares payable to the holders of record in proportion to their then holdings. Notwithstanding the direction of the resolution that the stock be delivered proportionately to the then existing stockholders, a single certificate for 5000 shares was issued in the name of the wife. However, this certificate was retained in the possession of the husband and never actually or constructively delivered to plaintiff, who had, until approximately the time she instituted this suit, no knowledge of the stock dividend or of the issuance of the certificate in her name; such knowledge as she has in this respect has come to her solely through information given her by her attorney.

The averments as to plaintiff's residence in and absence from the United States are as follows: In January, 1914, plaintiff, then residing in Tokyo, married Shinsaku Nagano, then a permanent resident of the United States. Following the birth of a daughter, Masako, in Japan in November, 1914, plaintiff immigrated to the United States in January, 1915, as a permanent resident, leaving her daughter in the care of plaintiff's mother. In 1916, a son, Shigeo, was born to plaintiff and her husband in Chicago. In 1919, plaintiff, her son, and her husband went to Japan on a voyage, having for its purpose the husband's recuperation from a severe attack of influenza which he had sustained during an epidemic occurring that year. While they were in Japan, another daughter, Takako, was born. After completion of their visit, the father, mother and son returned to Chicago, leaving the two daughters in the care of their grandmother. Plaintiff then continued to reside in Chicago with her husband until 1924.

In 1924, the daughter Takako's illness necessitated a visit to Japan by plaintiff and her husband. On this occasion they decided that plaintiff should remain in Japan as long as necessary to provide a Japanese education for the two daughters and for the American-born son, the latter's oriental education being deemed necessary in

order to prepare him to take his place in his father's importing business. The daughters remained in Japan largely because of lack of marriage prospects except among their own race; they finished their education and reached marriageable ages in 1932 and in 1937. In Japan such marriages are arranged for by the parents and a friend acting as intermediary, who is called a matchmaker. The presence of the parent with the daughter is indispensable. Contrary to the hopes of the father and mother, the anticipated marriages could not be arranged because so many of the young men were away in the army. This was at a time when Japan was engaged in military activities in Manchukuo. Finally, in 1941, Takako's marriage was arranged, but Masako is still unmarried and is past the age ordinarily acceptable for marriage. The United States Immigration Act of 1924 removed any right to bring the daughters to the United States during the years in which plaintiff was obliged to remain in Japan.

During all this period the husband remained physically present in and a permanent resident of the United States at Chicago. Plaintiff has at all times considered her home to be with her husband in Chicago, and has consistently retained her constant intention to return to her husband and her American residence at the earliest date possible. In the meantime, plaintiff's husband has visited her in Japan every year since her departure from the United States in the year 1924, save only for the years 1932 and 1933, during which she was in the United States, and save also for the war years, commencing in 1942. Plaintiff has at all times remained loyal to the United States and has not engaged in trade with Japan or participated in the Japanese war effort with Japan. During the war she was inactive and lived with her unmarried daughter in their cottage in Shizuoka. Her absence, because of these circumstances, she avers was only temporary and involuntary, occasioned by family obligations and not for the purpose of trading with Japan or for the purpose of residing in Japan.

In addition to the averments mentioned, the record contains an order of the Immigration and Naturalization Service of the Department of Justice, August 11, 1950, in which the Assistant Commissioner, Adjudications Division, held that there was ample evidence of record to support the conclusion reached by the Board of Special Inquiry and the American Consular Service that plaintiff was then returning to America from a temporary visit abroad; that she had never voluntarily relinquished her domicile in the United States and that she was entitled to enter this country "as a returning resident."

The District Court held as a matter of law that the facts averred were sufficient to bring her within the definition of an enemy contained in Section 2 of the Trading with the Enemy Act; that her long stay in Japan was such as to make of her a "resident within"

the territory of an enemy nation, regardless of the possibility that her domicile remained at all times in the United States where her husband had his domicile. The court was of the opinion that the alleged family necessity relied on by plaintiff as justification for her long stay in Japan, was not sufficient to exempt her from the correct connotation of the word "enemy." Accordingly, it decided that a valid cause of action was not stated.

The court considered also Section 12 of the War Claims Act of 1948 (Public Law 896, 80th Congress, 2nd Sess.) which amended the Trading with the Enemy Act by adding thereto Section 39, which, defendant claims, prevents recovery by plaintiff because she is a national of Japan. However, it did not consider this section relevant to a case brought under Section 9 (a) of the Act and held that the suit must fall under the provisions of Section 9 (a), because she was an enemy but not because of the provisions of the new Section 39.

Upon appeal, plaintiff urges that the court erred in finding that, under the averments of the complaint, plaintiff is an enemy within the meaning of the Trading with the Enemy Act so that she may not maintain an action under Section 9 (a) of the Trading with the Enemy Act, to recover her property vested by the Alien Property Custodian.

The Government contends that the court rightfully held that plaintiff was barred from bringing her action and renews its contention that, under Section 39, plaintiff is absolutely barred from maintaining any action as a citizen of Japan.

Section 2 of the Trading with the Enemy Act of 1917, as amended (U.S.C.A. Title 50 Appendix) defines "enemy" as: "Any individual * * * of any nationality, resident within the territory * * * of any nation with which the United States is at war * * *." Section 7 (c) provides for the seizure of enemy property belonging to or held for the benefit of an enemy, by the Alien Property Custodian; Section 9 (a) that "Any person not an enemy * * * claiming any interest, * * * in any money or other property which may have been seized by" the Custodian "* * * may file * * * a notice of his claim" and, if this is denied, "institute a suit * * * in the district court * * * to establish the interest, * * * so claimed," and if the claim is substantiated "the court shall order the * * * delivery to said claimant * * * of property so held." In pursuance of these pertinent statutes, plaintiff based her suit on her averments that she was a permanent resident of Chicago and, therefore, though an alien, not an enemy within the definition contained in Section 2; that she had never, since her marriage to an American resident, resided within Japan within the meaning of the Act, and that, therefore, under Section 9 (a) she was entitled to recover her assets taken over by the Custodian.

Whether the District Court rightfully held that she was an alien enemy within the meaning of the Act and, therefore, unable to maintain her suit, must be determined, of course, from the averments of her complaint, admitted by the defendant by his motion to dismiss. Essentially these are that, following her marriage, plaintiff entered the United States by permission of the government as a permanent resident and remained there as such until 1924; that after her visits to Japan in the intervening years, in each instance, she returned and was again admitted as a resident of the United States; that, upon the occasion of her last visit to Japan, she and her husband decided that she should remain in that country for the purpose of educating their daughters and getting them married and educating their son, preparatory to his participation in his father's business of importation of oriental food products; that, under Japan's traditional customs and laws, the marriage of the daughters was a matter of contract, involving the intervention of a "matchmaker" and requiring the presence of a parent; that, in pursuance of her stay, one daughter was married and that she was still living with the other in a cottage when the war with Japan intervened; that, after 1924, it was impossible, under the laws of the United States to obtain entry of the two girls to America; that it was practically impossible to find husbands for them except amongst members of their own race; that her stay in Japan was necessitated and imposed upon her by her family obligations and her parental duties; that at all times she intended to return to her home in Chicago to live there permanently with her husband; that she never abandoned her residence there and had no intention of abandoning the same or of changing it to any other place. Obviously, after the war intervened, it was impossible for her to leave Japan in fulfilment of this intention, and during that period, at least, she was under compulsory contraint in the legal sense of the word. After the war she did return to Chicago as a resident of the United States, being permitted to do so by the Immigration Bureau.

Residence is mostly a matter of intention; from the facts averred, it is clear that plaintiff never intended to change her established Chicago residence. The fact that she went to Japan in an attempt to discharge her parental duties does not negate the fact that her permanent residence was in Chicago and that her stay in Japan was for a limited period of time entailed by her praiseworthy sense of family obligation. Permanent residence does not arise out of a transitory abode or out of a temporary sojourn in a place other than that of residence. We think the averments of fact here such that it can only be said that on the face of the complaint she was at all times a permanent resident of the City of Chicago; that she never abandoned that residence and that, as such a resident of the United States, though an alien and at that time incapable of becoming

naturalized, she was never within the definition of an enemy,—a "resident within" enemy territory. In *McGrath* v. *Zander*, 177 F. 2d 649, the Court of Appeals for the District of Columbia considered a similar situation with this conclusion: "The crucial term 'resident within' has been interpreted in *Josephberg* v. *Markham*, 2 Cir., 1945, 152 F. 2d 644, 648-649; *Vowinckel* v. *First Federal Trust Co.*, *supra*, 10 F. 2d at pages 20, 21; *Stadtmuller* v. *Miller*, *supra*, 11 F. 2d at pages 737-739, 45 A.L.R. 895, and *Sarthou* v. *Clark*, D.C.S.D. Cal. 1948, 78 F. Supp. 139, 142. This last case epitomizes the several rulings in these words: '* * * "resident within the territory" as employed in the Act connotes something different from and more than living within the specified areas. It is rather indicative of a settled and permanent place of abode, volitionally acquired and voluntarily assumed. It is a habitation having domiciliary properties.'" We agree with what was said by that court and with the other decisions cited and conclude that there is nothing in the averments of fact justifying a conclusion of fact that plaintiff was "resident within" Japan.

However, this conclusion is not entirely decisive of the questioned correctness of the judgment of the District Court. Upon the outbreak of the war in 1941, Congress by the First War Powers Act, immediately granted power to the President to vest the property of alien "nationals." However, it did not repeal Sections 2 and 9 (a). As a consequence, the vesting power of the President was extended to the property of nationals but the right to sue for return, Section 9 (a), still ran to nonenemies. This situation was considered by the Supreme Court in *Clark* v. *Uebersee Finanz-Korporation*, A.G., 332 U. S. 480. After commenting that Section 5 (b) of the Act of 1941 granted the President the power to vest any property of any foreign country or national thereof, the court continued: "While the scope of the President's power was broadened, there was no amendment restricting the scope of Section 9 (a). As we have noted, Section 9 (a) granted 'any person not an enemy or ally of enemy,' claiming an interest in property seized, the right to reclaim it. So the provision reads today. * * * The 1941 amendment to Section 5 (b) reflected a complete reversal in that policy. The power of seizure and vesting was extended to all property of any foreign country or national so that no innocent appearing device could become a Trojan horse. Congress did not, however, alter the definitions of enemy or ally of enemy contained in Section 2. They remain the same as they were at the time *Behn, Meyer & Co.* v. *Miller* was decided. * * * Though neither Section 2 nor Section 9 (a) was amended with Section 5 (b) in 1941, one of them must be read differently after than before that event. * * * We believe a more harmonious reading of Section 2, Section 5 (b) and Section 9 (a) is had if the concept of enemy or ally of enemy is given a

scope which helps the amendment of 1941 fulfill its mission and which does not make Section 9 (a) for the first time in its history and contrary to the normal connotation of its terms stand as a barrier to the recovery of property by foreign interests which have no possible connection with the enemy." In short, Section 5 (b) as amended 1941, extended the power of seizure but it did not purport to limit the right of nonenemies to recover under Section 9 (a).

Up to this point we find nothing to impede plaintiff's action, but on July 3, 1948 Congress enacted an amendment which added Section 39, which provides that no property of "any national" of Japan vested in or transferred to an officer or agent of the government pursuant to the provisions of the Act shall be returned to the former owners and that the United States shall not pay compensation for such propery or interest therein. The word "national" had been defined in Executive Order No. 8389, April 10, 1940, 5 F.R. 1400, as amended, as follows: "Any person who has been domiciled in, or a subject citizen or resident of a foreign country at any time on or since the effective date of this Order." This definition was reaffirmed in Executive Order No. 9193, July 6, 1942, 7 F.R. 5205. The First War Powers Act, 1941, Title III, c. 593, 55 Stat. 838, 840, Section 302, provided that all orders promulgated by the President heretofore under the Trading with the Enemy Act, as amended, which would have been authorized if the provisions of the Act and the amendments made by it had been in effect, are "hereby approved, ratified, and confirmed." Therefore, by act of Congress, the word "national" as defined in the Executive orders approved by Congress, includes any person who is a citizen of a foreign country. Thus, if Section 39 is to be taken at its literal face value, it is the law that a citizen of Japan is a national of that nation and that as such plaintiff may not recover her property even though Section 9 (a) giving her right of action has not been expressly repealed. Such, says the government, is the situation here.

The District Court was of the opinion that Section 39 was not intended to repeal Section 9 (a). It concluded that the amendment which added Section 39 and certain other sections was dealing with an entirely different purpose, namely, that of creating a special fund of properties seized by the Custodian to be maintained by the government in a special account and to be expended by it in accord with certain expressed purposes and that it was not the intention of Congress in the enactment of the amendment to deprive nonenemy residents of the United States of their existing right to recover property owned by them and mistakenly seized by the Custodian.

We are not at all concerned with those parts of the legislation of Congress which empower the President through his designated agents, to take certain property. It is beyond question that in time of war the Executive should be and has been authorized to seize

property whenever it is suspected that it may be enemy property, but Congress, though recognizing the necessity of the broadest power in this respect in the Executive, has at all times evinced an intent not to keep from loyal residents, whether alien or citizen, nonenemy property which is rightfully in America, has served no enemy purpose and has threatened to serve none. Such was the administrative policy expressed by the Custodian in his presentation to the Congressional Committee, where he said that on occasion he had found it necessary to vest property which he later discovered he was not entitled to keep. He proceeded thus, he reported, because he considered it necessary to resolve all questions of jeopardy against the United States in favor of the government; if he had a strong suspicion that certain property was enemy property it was his conscientious duty to vest it. He added that subsequent investigations might indicate that he had been mistaken and, in such case, the property should be returned. The Supreme Court approved this practical solution of the problems involved in *Becker* v. *Cummings*, 296 U. S. 74 at 79, where it said: "Section 7 of the Trading with the Enemy Act conferred on the Alien Property Custodian authority summarily to seize property upon his determination that it was enemy owned, and such a seizure was lawful even though the determination were erroneous. *Central Union Trust Co.* v. *Garvan*, 254 U. S. 554; *Stoehr* v. *Wallace*, 255 U. S. 239; *Commercial Trust Co.* v. *Miller*, 262 U. S. 51. But in thus authorizing the seizure of property as a war measure Congress did not attempt the confiscation of the property of citizens or alien friends." This same thought is expressed in *Central Trust Co.* v. *Garvan*, 254 U. S. 554, 566, as follows: "There can be no doubt that Congress has power to provide for an immediate seizure in war times of property supposed to belong to an enemy, * * * if adequate provision is made for a return in case of mistake." As said in *Lamar* v. *Browne*, 92 U. S. 187, 196, necessarily, the custodian must act upon appearances. It is his official duty to seize and hold, leaving to the owners to make good their claim as against the capture, in the appropriate tribunal established for that purpose. Thus we have developed a clearly defined policy governing the vesting of enemy property and return of innocent property to a nonenemy owner.

Plaintiff is, under the averments of her complaint, the owner of innocent American property, a friendly alien permanent resident of the United States and as such, entitled to constitutional guarantees. Thus, in *Silesian-American Corp., et al.* v. *Clark, etc.*, 332 U. S. 469, the court said: "The Constitution guarantees to friendly aliens the right to just compensation for the requisitioning of their property by the United States. *Russian Fleet* v. *United States*, 282 U. S. 481, 489. We must assume that the United States will meet its obligations under the Constitution. Consequently, friendly aliens will be

compensated for any property taken * * *." This, of course, refers to the guarantees of the Fifth Amendment, *Russian Fleet* v. *United States*, 282 U. S. 481, 489. We think that the word "friendly" is as applicable to a loyal resident alien, even though of enemy nationality, as it is to one of our own citizens, and this seems to be the conclusion in other cases, such as *Stadtmuller* v. *Miller*, 11 F. 2nd 732 (CA2), 1926; *Vowinckel* v. *First Federal Trust Co.*, 10 F. 2nd 19 (CA9), and *Ex Parte Kumezo Kawato*, 317 U. S. 69, 63 S. Ct. 115. The Supreme Court, itself, said, in *Becker Steel Co.* v. *Cummings*, 296 U. S. 74, 79: "The seizure and detention which the statute commands and the denial of any remedy except that afforded by Section 9 (a) would be of doubtful constitutionality if the remedy given were inadequate to secure to the non-enemy owner either the return of his property or compensation for it." Thus if Section 39 should be interpreted as the Custodian insists it should be, serious doubt would arise as to its constitutionality, for such a construction would effectuate confiscation of the innocent private property of a friendly resident alien without compensation. Furthermore, the United States has consistently bound itself by treaty to accord to alien residents within its jurisdiction the right of access to American courts to that degree of protection for their person and property required by international law and just compensation and due process of law, if their property should be taken. See 11 Stat. 587, 44 Stat. 2132, 2397, 4441, 45 Stat. 2641, 47 Stat. 2135, 48 Stat. 1507, 49 Stat. 2659, including treaties with various foreign nations.

We need no citation of authority to support the proposition that repeals by implication are never favored and that the clearest case possible must be made before an inference may properly be drawn that a later act by implication repeals an earlier one. By Section 39 and its related sections, Congress was creating a special fund for a special purpose and providing for the disposition of property that it had previously granted the Custodian the right to seize. It was not attempting to pass upon or to deny the rights of a friendly enemy owner or of an alien resident owner to assert his claim but had in mind undoubtedly, from the context of the entire act, the creation of a special account of enemy property seized. As Mr. Justice Douglas said in *Clark* v. *Uebersee, etc., supra*, Section 9 (a) should be read harmoniously with subsequent legislation. In *Uebersee Finanz Korporation* v. *Markham*, 158 F. 2nd 313 (CA-DC), affirmed 332 U. S. 480, the Court of Appeals after concluding that any action provided by the Tucker Act, 28 U.S.C. 250, was forbidden by Section 7 (c), 50 U.S.C. App., held that to read out of the statutes the remedy created by Section 9 (a) was not justified. "In any event," said the court, "to sustain the Custodian's position not only would require a major job of statutory reconstruction, but would also—as to the property of friendly aliens—raise

grave doubts as to the constitutionality of the law. And this, of course, it is not permissible to do." Consequently it followed the language of the Supreme Court in *Markham* v. *Cabell*, 326 U. S. 404 to the effect that by amending Section 5 (a), Congress did not intend to delete Section 9 (a), saying: "the normal assumption is that where Congress amends only one section of a law, leaving another untouched, the two were designed to function as parts of an integrated whole."

In this connection it is well to bear in mind that in at least two instances, Congress refused to enact legislation expressly amending or repealing Section 9 (a). 14 H. R. 4840, 78th Cong., 2nd Sess. (1944) and H. R. 5089, 79th Cong., 2nd Sess. (1946). H. R. 4840 provided for a suit under Section 9 (a) to establish that the claimant was not a foreign country or national thereof as defined in Section 5 (b). If the claimant failed to prove these facts he would have been entitled to sue in the Court of Claims. The bill died in committee. Hearings Before Subcommittee No. 1 of the Committee on the Judiciary on H. R. 4840, 78th Cong., 2nd Sess. (1944). In H. R. 5089, it was proposed by Section 33 (a) that "a foreign country or national thereof may not institute, prosecute, or further maintain a suit pursuant to Section 9 (a) hereof in respect to any property or interest vested in or transferred to the Alien Property Custodian * * * or the net proceeds thereof," and by Section 33 (b) that "notwithstanding the provisions of Section 7 (c), such persons shall have the right to bring suit in the Court of Claims." But the House Judiciary Committee did not approve the bill. However, it was reintroduced as H. R. 6890, including again Sec. 33, and passed by the House with amendments with which we are not now concerned. However, the Senate Judiciary deleted it. S. 2378, 79th Cong., 2nd Sess. (1946). The Senate Report explained the omission as designed to eliminate the proposal to cut off the right of a friendly foreign national to sue for and obtain return of his property under Section 9 (a), thus retaining in full the "rights under Section 9 (a) which friendly foreign nationals together with United States citizens, have had for more than twenty-five years under the Act." Sen. Rep. No. 1839, 79th Cong., 2nd Sess. (1946). The bill as amended was passed by both Houses with some members protesting the deletion of Section 33, 92 Cong. Rec. 10628 (1946). See letter of Secretary Byrnes to Chairman Sumners of the House Judiciary Committee in connection with the hearings on H. R. 5089. Hearings Before Subcommittee No. 1 of the Committee on the Judiciary on H. R. 5089, 79th Cong., 2nd Sess. (1946) and Hearings Before Subcommittee No. 1 on the Judiciary on S. 2378, 79th Cong., 2nd Sess. (1946). Surely, after two determinations not to modify or repeal Section 9 (a) by express words, the Congress did not intend to do by implication what it had refused to do by

express repeal. In this connection, it is pertinent also to observe that Section 33 was amended July 1, 1948, to fix time limits within which claims under Sections 9 and 32 might be prosecuted. Section 39 was amended July 3, 1948, with the result, as the government insists, of repealing Section 9. It seems inconceivable that Congress would, on July 1, expressly provide an extension of time within which to file suits under Section 9 and two days later, forbid such suits entirely.

We think the Congressional intent was, as stated by Judge Campbell in the District Court, to cause all forfeitable enemy property to be placed in a special fund for a special purpose and to keep it there irrecoverably for that special purpose. We think the legislation such and the Congressional history such that it is evident that Congress was not proposing to deprive friendly alien residents of all opportunity to recover untainted American property,—a right recognized for some twenty-five years by express legislation. To impute such an intent to the Congress would result in a conclusion that it intended to deprive resident owners of innocent private property, untainted by enmity, without due process of law.

Our conclusion might well rest upon another basis. Thus, though literally speaking, plaintiff is a citizen of Japan, she is not a citizen within the meaning of the word and its connotation recognized by judicial decisions. We ordinarily think of a citizen as one who owes allegiance to a state and has a reciprocal right to protection by it. It is obvious that plaintiff, a loyal American resident, unable to secure citizenship in this country, on the averments of her complaint, owed no allegiance to Japan and had no reciprocal rights to protection by it. Again, our concept of a citizen is one who has the right to exercise all the political and civil privileges extended by his government, yet, under the averments of this complaint, plaintiff had no right to exercise any of the political or civil privileges of Japan. Citizenship conveys the idea of membership in a nation, yet under the averments, we think it can not be said that plaintiff is, in any true sense, a member of the nation of Japan. Though ineligible to citizenship until recently, she was and is a permanent resident, owning untainted American property. Her position, we believe, is not within the conception of citizenship of a foreign nation which Congress had in mind in defining a national.

We conclude that the judgment should be reversed and the cause remanded with directions to vacate the order dismissing the complaint and permit the suit to proceed.

Plaintiff insists that in case of reversal this court should enter judgment in favor of plaintiff. To do so would be beyond the limitations of our legitimate functions, for defendant has a right to controvert the averments of the complaint and to have a trial

upon the merits. We decide merely that plaintiff has stated a good cause of action and that no act of Congress has taken it away.

The judgment is reversed and remanded with directions as aforesaid.

A TRUE COPY:

TESTE:

_____,

Clerk of the United States Court of Appeals for the Seventh Circuit.

And on the same day, to-wit, on the twenty-sixth day of February, 1951, the following further proceedings were had and entered of record, to-wit:

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Chicago 10, Illinois

Monday, February 26, 1951.

Before: Hon. F. Ryan Duffy, *Circuit Judge*; Hon. Philip J. Finnegan, *Circuit Judge;* Hon. Walter C. Lindley, *Circuit Judge.*

No. 10192

KAKU NAGANO, PLAINTIFF-APPELLANT

vs.

J. HOWARD MCGRATH, ATTORNEY GENERAL, AS SUCCESSOR TO THE ALIEN PROPERTY CUSTODIAN, DEFENDANT-APPELLEE

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this Court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, reversed and that this cause be, and the same is hereby, remanded to the said District Court with directions to proceed in accordance with the opinion of this Court filed this day.

And afterward, to-wit, on the twelfth day of March, 1951, there was filed in the office of the Clerk of this Court a petition for rehearing, which said petition for rehearing is not copied herein.

And afterward, to-wit, on the twenty-second day of March, 1951, there was filed in the office of the Clerk of this Court an answer to the petition for rehearing, which said answer to the petition for rehearing is not copied herein.

And afterward, to-wit, on the fourth day of April, 1951, the following further proceedings were had and entered of record, to-wit:

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Chicago 10, Illinois

Wednesday, April 4, 1951.

Before: Hon. F. Ryan Duffy, *Circuit Judge*; Hon. Philip J. Finnegan, *Circuit Judge;* Hon. Walter C. Lindley, *Circuit Judge.*

No. 10192

KAKU NAGANO, PLAINTIFF-APPELLANT

vs.

J. HOWARD MCGRATH, ATTORNEY GENERAL, ETC., DEFENDANT-APPELLEE

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

It is ordered by the Court that the Petition for a Rehearing of this cause be, and the same is hereby, denied.

And afterward, to-wit, on the ninth day of April, 1951, the following further proceedings were had and entered of record, to-wit:

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Chicago 10, Illinois

April 9, 1951.

Before: Hon. Walter C. Lindley, *Circuit Judge*.

No. 10005

SHINSAKU NAGANO, PLAINTIFF- APPELLANT

vs.

J. HOWARD MCGRATH, ATTORNEY GENERAL OF THE UNITED STATES AS SUCCESSOR TO THE ALIEN PROPERTY CUSTODIAN, DEFENDANT-APPELLEE

No. 10192

KAKU NAGANO, PLAINTIFF-APPELLANT

vs.

J. HOWARD MCGRATH, ATTORNEY GENERAL OF THE UNITED STATES AS SUCCESSOR TO THE ALIEN PROPERTY CUSTODIAN, DEFENDANT-APPELLEE

Appeals from the United States District Court for the Northern District of Illinois, Eastern Division.

On motions of counsel for the Defendant-Appellee, it is ordered that the issuance of the mandates of this Court in these appeals be, and the same is hereby, stayed to and including May 9, 1951, pending application to the Supreme Court of the United States for writs of certiorari.

And afterward, to-wit, on the fourteenth day of May, 1951, the following further proceedings were had and entered of record, to-wit:

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Chicago 10, Illinois

May 14, 1951.

Before: Hon. F. Ryan Duffy, *Circuit Judge*; Hon. Philip J. Finnegan, *Circuit Judge;* Hon. Walter C. Lindley, *Circuit Judge.*

Nos. 10005 and 10192

SHINSAKU NAGANO AND KAKU NAGANO, PLAINTIFFS-APPELLANTS

vs.

J. HOWARD MCGRATH, ATTORNEY GENERAL OF THE UNITED STATES AS SUCCESSOR TO THE ALIEN PROPERTY CUSTODIAN, DEFENDANT-APPELLEE

Appeals from the United States District Court for the Northern District of Illinois, Eastern Division.

On consideration of the motions of counsel for the defendant-appellee for a further extension of the stay of mandates, it is ordered that the issuance of the mandates of this Court in these appeals be, and the same is hereby, further stayed until June 9, 1951.

And afterward, to-wit, on the eleventh day of June, 1951, the following further proceedings were had and entered of record, to-wit:

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Chicago 10, Illinois

I, Kenneth J. Carrick, Clerk of the United States Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing typewritten and printed pages contain a true copy of the opinion, judgment, order denying petition for rehearing, and orders staying the issuance of the mandate, entered by this Court, in: Cause No. 10192, Kaku Nagano, Plaintiff-Appellant, vs. J. Howard McGrath, Attorney General, etc., Defendant-Appellee, as the same remains upon the files and records of the United States Court of Appeals for the Seventh Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States Court of Appeals for the Seventh Circuit, at the City of Chicago, this sixth day of June A.D. 1951.

[SEAL.] (S.) KENNETH J. CARRICK,
Clerk of the United States Court of Appeals
for the Seventh Circuit.

☆ U. S. GOVERNMENT PRINTING OFFICE : 1951 954331 010

Supreme Court of the United States

No. 169, October Term, 1951

J. Howard McGrath, Attorney General, as Successor to the Alien Property Custodian, petitioner

vs.

Kaku Nagano

Order allowing certiorari

Filed October 8, 1951

The petition herein for a writ of certiorari to the United States Court of Appeals for the Seventh Circuit is granted. The case is transferred to the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Clark took no part in the consideration or decision of this application.

U. S. GOVERNMENT PRINTING OFFICE: 1951